

Law and Justice Interim Committee

SJ 3: Study The Board of Pardons and Parole

Testimony of Sam Lemaich, Former BOP&P Member

September 20, 2013

Chairman and committee members; my name is Sam Lemaich. By way of background information, I served on the Parole Board from April 2009 to April 2013. Prior to serving on the Board, I had 40 years of correctional experience; 12 years as a probation officer and administrator in California and 28 years as a Probation and Parole Officer in Montana. I retired in 2008 as Regional Administrator for the Department of Corrections in Region 1, Missoula.

I was appointed to the Board, by Governor Brian Schweitzer. I had never met Governor Schweitzer and believe my appointment was based on my experience and not my politics. I applied for the Board position as I felt my background lent to continuing my public service during my retirement. My application was self-motivated but endorsed by many in the criminal justice and correctional community. During my service, I found the Board and DOC staff to be innovative, professional and of high integrity.

My work on the Board involved some of the most intense and difficult decisions of my correctional career. With my experience, I was not unfamiliar with criminal offenders. I had supervised offenders, some of whom had committed very heinous crimes. The *major* difference being, as a Probation and Parole Officer, these offenders were sent to me by judges or the Parole Board. As a Board member, I and my fellow Board members were charged with the responsibility of determining if these offenders were appropriate for early release from incarceration.

As a Board member, my personal workload consisted of hearing 50-60 cases per month with a panel of one or two other Board members. I would spend between 20-25 hours per month reviewing cases by reading institutional staff reports, Parole Board staff reports, psychological evaluations, offender parole plans, victim impact letters and letters in support or opposition to Parole.

I believe I and all Board members took our responsibility seriously and entered hearings as informed as possible.

The written reports provided information as to an offender's criminal history, adjustment to prior supervision, institution adjustment, nature and severity of the current offense, treatment needed and treatment completed. Institutional reports were reviewed and signed by the offender. Parole staff reports and institutional reports contained a recommended disposition.

The written information would give me some idea as to my course of action, but testimony and information received at the actual hearing was critical in the decision making process. Dispositions often differed from either parole staff or institutional staff recommendations. On average, I would spend 3 days per month in hearings in addition to travel time.

I would weigh testimony based on its objectivity, also considering the source of the information provided. Weighing all information provided was no easy task and could not be reduced to a simple formula. Factors that I gave strong consideration to were severity of the offense, prior criminal history, adjustment to prior supervision, institutional conduct, identified treatment needs and corresponding completion of treatment, victim input and community support pro or con.

Every case was unique. The severity of an offense could be a factor outweighing any other factors. After an offender had served only 25% of their sentence for a heinous crime, it would be unlikely I would vote for parole on an initial appearance. I believed parole at an initial appearance in these cases would diminish the severity of the offense in the minds of the victim and the public. In non-violent and less severe crimes amount of time served may have been less of an issue and other factors given more weight.

In all cases, public safety was my primary consideration.

I did consider hearings at community based programs somewhat differently than those at secure facilities. Many offenders had arrived at pre-release or community treatment programs with endorsements from the Parole Board. The offenders had passed review by local screening committees. In pre-release centers most offenders were already demonstrating a positive adjustment to the community by working, paying restitution and participating

in treatment programs. In all cases, in addition to statutory requirements, my philosophy was a concern for public safety and offender accountability.

Parole Violators

Parole violations were brought before the Board via Parole Officers through hearings officers or Board staff. Often violations did not result in formal hearings before the Board but were resolved with less formal action with intervention hearings and sanctions at the local level. The Board, each month administratively reviewed and approved sanctions in which the parolee waived a formal hearing. 30-40 of these cases would be administratively reviewed each month. In parole violation cases in which a formal hearing was requested, the Board would become the finder of fact, hearing witness testimony. If offenders were found in violation, I would consider the seriousness of the violation in relation to the current offense, length of time under supervision prior to the violation, time remaining on parole, prior interventions and violation history. Reinstatement on parole following brief periods of incarceration at the START program sanction center and additional follow-up treatment were common. Cases involving a return to prison would be placed on Annual Review. Recidivism rates in Montana for "new crimes" are the lowest in the country. I believe this is the direct result of swift intervention when technical violations are detected, both in probation and parole cases.

Clemency:

Most months, I would be involved in four or five clemency cases regarding commutation or pardon. My personal philosophy was that these were very exceptional remedies and should be granted only under very exceptional circumstances and or exemplary behavior. Many cases involved pardon requests regarding misdemeanor convictions. I believe these could be better dealt with by some remedy outside of the Board and governor's office. Crimes of misdemeanors, DUI and Domestic Abuse come with increased penalties for subsequent convictions. Local sentencing authorities may be in a better position to deal with clemency requests in misdemeanor cases.

As a note, I served on the panel that considered the commutation request of death sentence inmate, Ronald Smith. This was a serious recommendation to make requiring extensive review and heart wrenching testimony pro and con.

Further considerations:

- 1. During the past decade, Montana has greatly expanded its community corrections programs so that the male prison population has grown at a much slower rate than initially projected. Eighty percent of all offenders are currently managed outside of prison. Over the past 16 years the use of DOC commitments by judges in lieu of straight prison sentences has grown dramatically, primarily based on the increased availability of community programs. Technical violations of parole and probation supervision are frequently being addressed by intermediate sanctions short of a prison return. I mention this because though progress can still be made, the 20% of the offender population that is in secure care have in most cases earned the trip via serious offenses or repeated failure at community placement. I have seen many cases where despite everyone's best efforts the offender has "broken into prison". This I think did and continues to give the Parole Board pause when considering the early release of offenders.**
- 2. Montana has a liberal parole eligibility requirement at having to serve 25% of a prison sentence to parole eligibility. Many states have stricter requirements. In 1995, a strong push was made and legislation was adopted to provide "truth in sentencing". Goodtime and dangerous and non-dangerous designations in regard to parole eligibility were eliminated. These factors play a role in the decision to release.**
- 3. Alternatives to the elimination of the Parole Board could have unintended consequences. Mandatory early release based solely on time served discourages treatment participation and is a disincentive for positive institutional adjustment. Determinate sentencing without parole has the potential to increase prison population as judges may be reluctant to impose lesser sentences based on the lack of parole. Placement of releasing authority into other than an autonomous agency may make for decisions based more on budgetary concerns, or political considerations rather than public safety. I feel Montana's citizen Parole Board has a direct connect to the public, which would be lost by its elimination.**

In closing, I appreciate this Committee's work in reviewing the parole Board. Any system can benefit from constructive review. I believe the Board and the DOC have worked to provide alternatives to hard cell incarceration and to operate not only in the interest of offenders but all Montana citizens. Though allegations have been presented to this Committee, I can say I have not witnessed any intended conspiracy to extend periods of incarceration based on profit, but only appropriate length of stay for public safety and consequences for crimes committed.